

Millage, Chair  
Jaeger  
Schultz

HSB 81  
JUDICIARY

Succ  
SF / HF

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY CHAIR-  
PERSON LARSON)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to estate issues by modifying the warranty by a  
2 trustee, exemptions from execution and beneficiary  
3 designations and transfer-upon-death provisions related to  
4 pension and retirement accounts, jurisdiction of the probate  
5 court, fees payable on certain trusts, claims against estates  
6 for medical assistance payments, notice provisions relating to  
7 claims against estates, and disclaimers made by beneficiaries.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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2008/11/14  
Succeeded by

1 Section 614.14, subsection 4, paragraph b, Code  
2 1999, is amended to read as follows:

3 b. That, to the knowledge of the trustee, the person  
4 creating the trust was under no disability or infirmity at the  
5 time the trust was created.

6 Sec. 2. Section 627.6, subsection 8, Code 1999, is amended  
7 by adding the following new paragraph:

8 NEW PARAGRAPH. f. All contributions to and assets in the  
9 following list of plans or contracts and the accumulated  
10 earnings, and market increases in value, therefrom:  
11 simplified employee pension plans, self-employed pension  
12 plans, Keogh plans, individual retirement accounts, Roth  
13 individual retirement accounts, and similar plans for  
14 retirement investments in the future authorized under federal  
15 law. However, contributions to a plan shall not be exempt to  
16 the extent that the contributions for the twenty-four month  
17 period prior to the date the exemption is claimed or execution  
18 is issued exceed ten thousand dollars in the aggregate over  
19 and above the average contributions that had been made to the  
20 plan or plans by the debtor or the debtor's employer or both  
21 in the five tax years ending prior to the twenty-four-month  
22 period before the date the exemption is claimed or the  
23 execution is issued. The exception to the exemption in this  
24 paragraph for contributions within the twenty-four-month  
25 period prior to the date the exemption is claimed or execution  
26 is issued shall not include the interest and any accumulation  
27 on that interest in any new plans or contracts that are used  
28 to replace prior plans, contracts, or policies that would have  
29 been excludable from a bankruptcy estate or that the debtor  
30 could have claimed exempt from execution at the time of the  
31 transfer. For purposes of this paragraph, market increases in  
32 value shall include, but not be limited to, dividends, stock  
33 splits, interest, and appreciation.

34 Sec. 3. Section 633.10, subsection 4, Code 1999, is  
35 amended by adding the following new paragraph:

1 NEW PARAGRAPH. d. A trust that is administered solely or  
 2 jointly by an individual trustee or trustees is not subject to  
 3 the jurisdiction of the court unless jurisdiction is invoked  
 4 by a trustee or beneficiary, or if otherwise provided by the  
 5 governing instrument. Upon application of all trustees  
 6 administering a trust which is subject to the court's  
 7 jurisdiction, and following notice to beneficiaries as  
 8 provided in section 633.40, subsection 4, the court shall  
 9 release the trust from further jurisdiction unless one or more  
 10 beneficiaries object, on the condition that jurisdiction may  
 11 thereafter be invoked by a trustee or beneficiary. The  
 12 provisions of this paragraph shall be effective for  
 13 applications filed on or after July 1, 1997.

14 Sec. 4. Section 633.31, Code 1999, is amended by adding  
 15 the following new subsection:

16 NEW SUBSECTION. 3. The fee set forth in subsection 2,  
 17 paragraph "k", shall not be charged on any property  
 18 transferred to a testamentary trust from an estate that has  
 19 been administered in this state and for which court costs have  
 20 been assessed and paid.

21 Sec. 5. NEW SECTION. 633.357 CUSTODIAL INDIVIDUAL  
 22 RETIREMENT ACCOUNTS.

23 1. As used in this section, unless the context otherwise  
 24 requires:

25 a. "Custodial independent retirement account" means an  
 26 individual retirement account in accordance with section  
 27 408(a) of the Internal Revenue Code or a Roth individual  
 28 retirement account in accordance with section 408A of the  
 29 Internal Revenue Code, the assets of which are not held in  
 30 trust.

31 b. "Designator" means a person entitled to designate the  
 32 beneficiary or beneficiaries of a custodial independent  
 33 retirement account.

34 2. The assets of a custodial independent retirement  
 35 account shall pass on or after the death of the designator of

1 the custodial independent retirement account to the  
2 beneficiary or beneficiaries specified in the custodial  
3 independent retirement account agreement signed by the  
4 designator or designated by the designator in writing pursuant  
5 to the custodial independent retirement account agreement.  
6 Assets that pass to a beneficiary pursuant to this section  
7 shall not be considered part of the designator's probate  
8 estate except to the extent that the designator's estate is a  
9 beneficiary. The designation of a beneficiary shall not be  
10 considered testamentary and does not have to be witnessed.

11 3. This section applies to a custodial independent  
12 retirement account established and a beneficiary designation  
13 made prior to, on, or after the effective date of this Act.  
14 This section shall be considered to be declarative of the law  
15 as the law existed immediately prior to the effective date of  
16 this Act.

17 4. This section shall not be construed to imply that  
18 assets or benefits that are payable upon the death of a person  
19 to a beneficiary or beneficiaries designated in or pursuant to  
20 a written arrangement not described in this section, other  
21 than a will, are part of the person's probate estate or that  
22 the arrangement is testamentary.

23 Sec. 6. Section 633.410, Code 1999, is amended to read as  
24 follows:

25 633.410 LIMITATION ON FILING CLAIMS AGAINST DECEDENT'S  
26 ESTATE.

27 All claims against a decedent's estate, other than charges,  
28 whether due or to become due, absolute or contingent,  
29 liquidated or unliquidated, founded on contract or otherwise,  
30 are forever barred against the estate, the personal  
31 representative, and the distributees of the estate, unless  
32 filed with the clerk within the later to occur of four months  
33 after the date of the second publication of the notice to  
34 creditors or, as to each claimant whose identity is reasonably  
35 ascertainable, one month after service of notice by ordinary

1 mail to the claimant's last known address. However, notice is  
 2 not required to be given by mail to any creditor whose claim  
 3 will be paid or otherwise satisfied during administration and  
 4 the personal representative may waive the limitation on filing  
 5 provided under this section. This section does not bar claims  
 6 for which there is insurance coverage, to the extent of the  
 7 coverage, ~~claims-for-debts-created-under-section-249A-5~~  
 8 ~~relating-to-the-recovery-of-medical-assistance-payments,~~ or  
 9 claimants entitled to equitable relief due to peculiar  
 10 circumstances.

11 Sec. 7. Section 633.440, Code 1999, is amended to read as  
 12 follows:

13 633.440 CONTENTS OF NOTICE OF DISALLOWANCE.

14 Such a notice of disallowance shall advise the claimant  
 15 that the claim has been disallowed and will be forever barred  
 16 unless the claimant shall within twenty days after the date of  
 17 mailing the notice, file a request for hearing on the claim  
 18 with the clerk, and mail a copy of such request for hearing to  
 19 the personal representative and the attorney of record, if  
 20 any, by certified mail.

21 Sec. 8. Section 633.704, subsection 3, paragraph a, Code  
 22 1999, is amended to read as follows:

23 a. PASSAGE OF DISCLAIMED INTEREST OR PROPERTY. Unless the  
 24 transferor has otherwise provided, the property, interest, or  
 25 right disclaimed, and any future interest which is to take  
 26 effect in possession or enjoyment at or after the termination  
 27 of the interest or right disclaimed, descends or shall be  
 28 distributed as if the disclaimant has died prior to the date  
 29 of the transfer, or if the disclaimant is one designated to  
 30 take pursuant to a power of appointment exercised by  
 31 testamentary instrument, then as if the disclaimant has  
 32 predeceased the donee of the power unless the donee of the  
 33 power has otherwise provided. In every case, the disclaimer  
 34 relates back for all purposes to the date of the transfer. In  
 35 ~~the-case-of-a-disclaiming-beneficiary-under-a-will, other than~~

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1 a-spouse, the property, interest, or right disclaimed passes  
 2 to the heirs of the disclaimant unless from the terms of the  
 3 transferor's will the intent is clear and explicit to the  
 4 contrary, in which event the property, interest, or right  
 5 disclaimed passes pursuant to the will. In the case of a  
 6 disclaimer under a will by a spouse the property, interest, or  
 7 right disclaimed lapses unless from the terms of the  
 8 transferor's will the intent is clear and explicit to the  
 9 contrary.

EXPLANATION

11 This bill addresses the probate code.

12 Code section 614.14 is amended by limiting the warranty the  
 13 trustee makes regarding the trustor's condition at the time of  
 14 creation of the trust to that within the trustee's knowledge.

15 The bill adds to Code section 627.6 an exemption from  
 16 execution relating to a debtor's pension and retirement  
 17 accounts. A limitation is placed on the exemption for above  
 18 average contributions made two years prior to claiming the  
 19 exemption.

20 The bill adds a new paragraph to Code section 633.10  
 21 releasing certain testamentary trusts from the jurisdiction of  
 22 the court.

23 The bill amends Code section 633.31 to exempt certain  
 24 property transferred from a testamentary trust from certain  
 25 statutory fees, to prohibit a trust from being charged fees  
 26 after the related estate has already paid court costs.

27 The bill creates a new Code section 633.357 to provide that  
 28 the beneficiary designation by the owner of a custodial  
 29 independent retirement account controls the distribution of  
 30 the benefits and the account is not a part of the testamentary  
 31 disposition of a deceased owner subject to the terms of the  
 32 will of the owner unless the designated beneficiary of the  
 33 account is the estate of the owner.

34 The bill repeals a 1995 change to Code section 633.410 that  
 35 exempted claims based on medical assistance payments from the

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1 timely filing limitation requirements.

2 The bill amends Code section 633.440 to require that a  
3 request for a hearing on a notice of disallowance of a claim  
4 against an estate must be mailed not only to the personal  
5 representative, but also to any attorney of record.

6 The bill amends Code section 633.704 to remove language  
7 regarding a disclaimer made by a beneficiary, to make it  
8 consistent with the antilapse provisions of Code sections  
9 633.273 and 633.274.

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5-3/18/99. Judiciary 0  
5-3/30/99 Do Pass

MAR 12 1999

Place On Calendar

HOUSE FILE 662  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 81)

Passed House, Date <sup>(p. 746)</sup> 3/18/99 Passed Senate, Date <sup>(p. 1096)</sup> 4/13/99  
Vote: Ayes 93 Nays 0 Vote: Ayes 49 Nays 0  
Approved April 23, 1999

A BILL FOR

1 An Act relating to estate issues by modifying the warranty by a  
2 trustee, jurisdiction of the probate court, fees payable on  
3 certain trusts, notice provisions relating to claims against  
4 estates, and disclaimers made by beneficiaries.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 662

1 Section 1. Section 614.14, subsection 4, paragraph b, Code  
2 1999, is amended to read as follows:

3 b. That, to the knowledge of the trustee, the person  
4 creating the trust was under no disability or infirmity at the  
5 time the trust was created.

6 Sec. 2. Section 633.10, subsection 4, Code 1999, is  
7 amended by adding the following new paragraph:

8 NEW PARAGRAPH. d. A trust that is administered solely or  
9 jointly by an individual trustee or trustees is not subject to  
10 the jurisdiction of the court unless jurisdiction is invoked  
11 by a trustee or beneficiary, or if otherwise provided by the  
12 governing instrument. Upon application of all trustees  
13 administering a trust which is subject to the court's  
14 jurisdiction, and following notice to beneficiaries as  
15 provided in section 633.40, subsection 4, the court shall  
16 release the trust from further jurisdiction unless one or more  
17 beneficiaries object, on the condition that jurisdiction may  
18 thereafter be invoked by a trustee or beneficiary. The  
19 provisions of this paragraph shall be effective for  
20 applications filed on or after July 1, 1997.

21 Sec. 3. Section 633.31, Code 1999, is amended by adding  
22 the following new subsection:

23 NEW SUBSECTION. 3. The fee set forth in subsection 2,  
24 paragraph "k", shall not be charged on any property  
25 transferred to a testamentary trust from an estate that has  
26 been administered in this state and for which court costs have  
27 been assessed and paid.

28 Sec. 4. NEW SECTION. 633.357 CUSTODIAL INDIVIDUAL  
29 RETIREMENT ACCOUNTS.

30 1. As used in this section, unless the context otherwise  
31 requires:

32 a. "Custodial independent retirement account" means an  
33 individual retirement account in accordance with section  
34 408(a) of the Internal Revenue Code or a Roth individual  
35 retirement account in accordance with section 408A of the

1 Internal Revenue Code, the assets of which are not held in  
2 trust.

3 b. "Designator" means a person entitled to designate the  
4 beneficiary or beneficiaries of a custodial independent  
5 retirement account.

6 2. The assets of a custodial independent retirement  
7 account shall pass on or after the death of the designator of  
8 the custodial independent retirement account to the  
9 beneficiary or beneficiaries specified in the custodial  
10 independent retirement account agreement signed by the  
11 designator or designated by the designator in writing pursuant  
12 to the custodial independent retirement account agreement.  
13 Assets that pass to a beneficiary pursuant to this section  
14 shall not be considered part of the designator's probate  
15 estate except to the extent that the designator's estate is a  
16 beneficiary. The designation of a beneficiary shall not be  
17 considered testamentary and does not have to be witnessed.

18 3. This section applies to a custodial independent  
19 retirement account established and a beneficiary designation  
20 made prior to, on, or after the effective date of this Act.  
21 This section shall be considered to be declarative of the law  
22 as the law existed immediately prior to the effective date of  
23 this Act.

24 4. This section shall not be construed to imply that  
25 assets or benefits that are payable upon the death of a person  
26 to a beneficiary or beneficiaries designated in or pursuant to  
27 a written arrangement not described in this section, other  
28 than a will, are part of the person's probate estate or that  
29 the arrangement is testamentary.

30 Sec. 5. Section 633.440, Code 1999, is amended to read as  
31 follows:

32 633.440 CONTENTS OF NOTICE OF DISALLOWANCE.

33 Such a notice of disallowance shall advise the claimant  
34 that the claim has been disallowed and will be forever barred  
35 unless the claimant shall within twenty days after the date of

1 mailing the notice, file a request for hearing on the claim  
2 with the clerk, and mail a copy of such request for hearing to  
3 the personal representative and the attorney of record, if  
4 any, by certified mail.

5 Sec. 6. Section 633.704, subsection 3, paragraph a, Code  
6 1999, is amended to read as follows:

7 a. PASSAGE OF DISCLAIMED INTEREST OR PROPERTY. Unless the  
8 transferor has otherwise provided, the property, interest, or  
9 right disclaimed, and any future interest which is to take  
10 effect in possession or enjoyment at or after the termination  
11 of the interest or right disclaimed, descends or shall be  
12 distributed as if the disclaimant has died prior to the date  
13 of the transfer, or if the disclaimant is one designated to  
14 take pursuant to a power of appointment exercised by  
15 testamentary instrument, then as if the disclaimant has  
16 predeceased the donee of the power unless the donee of the  
17 power has otherwise provided. In every case, the disclaimer  
18 relates back for all purposes to the date of the transfer. In  
19 ~~the case of a disclaiming beneficiary under a will, other than~~  
20 ~~a spouse, the property, interest, or right disclaimed passes~~  
21 ~~to the heirs of the disclaimant unless from the terms of the~~  
22 ~~transferor's will the intent is clear and explicit to the~~  
23 ~~contrary, in which event the property, interest, or right~~  
24 ~~disclaimed passes pursuant to the will.~~ In the case of a  
25 disclaimer under a will by a spouse the property, interest, or  
26 right disclaimed lapses unless from the terms of the  
27 transferor's will the intent is clear and explicit to the  
28 contrary.

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#### EXPLANATION

30 This bill addresses the probate code.

31 Code section 614.14 is amended by limiting the warranty the  
32 trustee makes regarding the trustor's condition at the time of  
33 creation of the trust to that within the trustee's knowledge.

34 The bill adds a new paragraph to Code section 633.10  
35 releasing certain testamentary trusts from the jurisdiction of

1 the court.

2 The bill amends Code section 633.31 to exempt certain  
3 property transferred from a testamentary trust from certain  
4 statutory fees, to prohibit a trust from being charged fees  
5 after the related estate has already paid court costs.

6 The bill creates a new Code section 633.357 to provide that  
7 the beneficiary designation by the owner of a custodial  
8 independent retirement account controls the distribution of  
9 the benefits and the account is not a part of the testamentary  
10 disposition of a deceased owner subject to the terms of the  
11 will of the owner unless the designated beneficiary of the  
12 account is the estate of the owner.

13 The bill amends Code section 633.440 to require that a  
14 request for a hearing on a notice of disallowance of a claim  
15 against an estate must be mailed not only to the personal  
16 representative, but also to any attorney of record.

17 The bill amends Code section 633.704 to remove language  
18 regarding a disclaimer made by a beneficiary, to make it  
19 consistent with the antilapse provisions of Code sections  
20 633.273 and 633.274.

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## AN ACT

RELATING TO ESTATE ISSUES BY MODIFYING THE WARRANTY BY A TRUSTEE, JURISDICTION OF THE PROBATE COURT, FEES PAYABLE ON CERTAIN TRUSTS, NOTICE PROVISIONS RELATING TO CLAIMS AGAINST ESTATES, AND DISCLAIMERS MADE BY BENEFICIARIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 614.14, subsection 4, paragraph b, Code 1999, is amended to read as follows:

b. That, to the knowledge of the trustee, the person creating the trust was under no disability or infirmity at the time the trust was created.

Sec. 2. Section 633.10, subsection 4, Code 1999, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. A trust that is administered solely or jointly by an individual trustee or trustees is not subject to the jurisdiction of the court unless jurisdiction is invoked by a trustee or beneficiary, or if otherwise provided by the governing instrument. Upon application of all trustees administering a trust which is subject to the court's jurisdiction, and following notice to beneficiaries as provided in section 633.40, subsection 4, the court shall release the trust from further jurisdiction unless one or more beneficiaries object, on the condition that jurisdiction may thereafter be invoked by a trustee or beneficiary. The provisions of this paragraph shall be effective for applications filed on or after July 1, 1997.

Sec. 3. Section 633.31, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 3. The fee set forth in subsection 2, paragraph "k", shall not be charged on any property transferred to a testamentary trust from an estate that has been administered in this state and for which court costs have been assessed and paid.

Sec. 4. NEW SECTION. 633.357 CUSTODIAL INDIVIDUAL RETIREMENT ACCOUNTS.

1. As used in this section, unless the context otherwise requires:

a. "Custodial independent retirement account" means an individual retirement account in accordance with section 408(a) of the Internal Revenue Code or a Roth individual retirement account in accordance with section 408A of the Internal Revenue Code, the assets of which are not held in trust.

b. "Designator" means a person entitled to designate the beneficiary or beneficiaries of a custodial independent retirement account.

2. The assets of a custodial independent retirement account shall pass on or after the death of the designator of the custodial independent retirement account to the beneficiary or beneficiaries specified in the custodial independent retirement account agreement signed by the designator or designated by the designator in writing pursuant to the custodial independent retirement account agreement. Assets that pass to a beneficiary pursuant to this section shall not be considered part of the designator's probate estate except to the extent that the designator's estate is a beneficiary. The designation of a beneficiary shall not be considered testamentary and does not have to be witnessed.

3. This section applies to a custodial independent retirement account established and a beneficiary designation made prior to, on, or after the effective date of this Act. This section shall be considered to be declarative of the law as the law existed immediately prior to the effective date of this Act.

4. This section shall not be construed to imply that assets or benefits that are payable upon the death of a person to a beneficiary or beneficiaries designated in or pursuant to a written arrangement not described in this section, other than a will, are part of the person's probate estate or that the arrangement is testamentary.

Sec. 5. Section 633.440, Code 1999, is amended to read as follows:

633.440 CONTENTS OF NOTICE OF DISALLOWANCE.

Such a notice of disallowance shall advise the claimant that the claim has been disallowed and will be forever barred unless the claimant shall within twenty days after the date of mailing the notice, file a request for hearing on the claim with the clerk, and mail a copy of such request for hearing to the personal representative and the attorney of record, if any, by certified mail.

Sec. 6. Section 633.704, subsection 3, paragraph a, Code 1999, is amended to read as follows:

a. PASSAGE OF DISCLAIMED INTEREST OR PROPERTY. Unless the transferor has otherwise provided, the property, interest, or right disclaimed, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest or right disclaimed, descends or shall be distributed as if the disclaimant has died prior to the date of the transfer, or if the disclaimant is one designated to take pursuant to a power of appointment exercised by testamentary instrument, then as if the disclaimant has predeceased the donee of the power unless the donee of the power has otherwise provided. In every case, the disclaimer relates back for all purposes to the date of the transfer. ~~In the case of a disclaiming beneficiary under a will, other than a spouse, the property, interest, or right disclaimed passes to the heirs of the disclaimant unless from the terms of the transferor's will the intent is clear and explicit to the contrary, in which event the property, interest, or right~~

~~disclaimed-passes-pursuant-to-the-will.~~ In the case of a disclaimer under a will by a spouse the property, interest, or right disclaimed lapses unless from the terms of the transferor's will the intent is clear and explicit to the contrary.

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RON J. CORBETT  
Speaker of the House

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MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 662, Seventy-eighth General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved April 23 1999

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THOMAS J. VILSACK  
Governor